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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

RUST et al. *v.* REID et al.

Nov. 14, 1918.

[97 S. E. 324.]

1. **Jury (§ 99 (4)*)—Competency of Jurors—Impressions—Fairness.**—In view of the trend of recent decisions toward limiting rather than extending a juror's disqualification by reason of mere opinion, to disqualify, the opinion must be substantial, and not a mere impression insufficient to interfere with fairness.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 39.]

2. **Appeal and Error (§ 968*)—Questions of Fact—Jury—Fairness—Weight Due Opinion of Trial Judge—Voir Dire.**—Although great weight is justly due the opinion of the trial judge, who saw and heard jurors on voir dire, the question of a juror's "opinion" disqualifying for unfairness must be determined from all circumstances of the case.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 456; 9 Va.-W. Va. Enc. Dig. 50.]

3. **Appeal and Error (§ 968*)—Questions of Fact—Competency of Jurors—Opinions—Partiality.**—Where the reading of the examination of jurors on their voir dire, in the light of the weight due the opinion of the trial judge, who saw and heard them, does not make a lasting impression that all of them "stand indifferent in the cause," as required by Code 1904, § 3154, it must be concluded that the jury was not free from the suspicion of unfairness and partiality.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 45.]

4. **Jury (§ 87*)—Qualification of Jurors—Bias—Personal Interest—Testamentary Capacity.**—Upon the question of a testator's capacity to make a will, jurors who had had business transactions with testator at about the time in question have a disqualifying interest in upholding testator's capacity to transact business.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 22, 35.]

5. **Jury (§ 103 (3)*)—Qualification of Jurors—Bias—Belief That Expressed Opinion Will Not Influence Verdict.**—Where a juror, who had expressed an opinion upon the issue as to testator's testamentary capacity from "just what I know of him," felt he could disre-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

gard the opinion and give a fair trial, but later testified he felt very much biased, he was disqualified for unfairness.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 45.]

6. Jury (§ 103 (3*))—Qualification of Jurors—Opinions—Acquaintance and Knowledge.—However honest a juror may be in his belief that he can disregard his own expressed opinions as to the testamentary capacity of one with whom he has had long acquaintance and business transactions, the law presumes that his prejudices may follow him into the jury box and unconsciously control his verdict.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 45.]

7. Jury (§ 103 (5*))—Competency of Jurors—Opinion—Influence on Verdict—Requiring Evidence to Overcome—"Stand Indifferent to the Cause."—Where a juror has knowledge of controverted facts, material to the issue from which, he states on his voir dire, he has formed an opinion which it will require evidence to remove, he does not "stand indifferent to the cause," as required by Code 1904, § 3154.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 21, 45.]

8. Jury (§ 103 (11*))—Competency of Jurors—Opinion Based on Newspaper Reports or Other Hearsay Evidence.—That a juror has formed an opinion concerning a material issue of a civil case from newspaper reports or other hearsay evidence, that will require evidence to overcome, does not necessarily disqualify.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 43.]

9. Jury (§ 47*)—Qualification of Jurors—Drawing from Another City or County.—Code 1904, §§ 3142-3146, providing for civil juries, make no provision for getting qualified jurors from another city or county, and the power to obtain such jurors is not inherent in the court, and is not authorized by section 4024, which applies to criminal cases only.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 783.]

10. Venue (§ 50*)—Change—Prejudice—Jury.—Where appellants were unable to secure from the regular panel of the city an impartial jury to try the issue of testator's testamentary capacity, they should have moved for change of venue, under Code 1904, § 3316.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 781-2.]

11. Jury (§ 70 (2*))—Qualification of Jurors—Special Venire—Refusal to Order.—An application for a special venire to try an issue as to testamentary capacity is addressed to the sound discretion of the court, whose denial thereof will not be reversed, unless shown to have been improperly exercised.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 62.]

12. Appeal and Error (§ 843 (2*))—Unnecessary Questions.—Where a case must be reversed upon other grounds, an assignment

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

upon the trial court's refusal to quash the venire facias for violation of statute in drawing jury, not likely to occur upon another trial, need not be considered.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 586.]

13. Evidence (§ 63*)—Presumption of "Sanity."—"Sanity" is the normal condition of the human mind, and every man is presumed sane until the contrary is shown.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Sanity.* For other cases, see 7 Va.-W. Va. Enc. Dig. 672, 680.]

14. Evidence (§ 67 (2)*)—Adjudication of Insanity—Presumption—Subsequent Adjudication of Sanity as Restoring Presumption of Sanity.—After adjudication of insanity, a presumption of insanity continues; but a subsequent adjudication of restoration to sanity restores the previous presumption of sanity.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 680-1-2.]

15. Wills (§ 52 (1)*)—Testamentary Capacity—Burden of Proof.—The burden of proving testamentary capacity rests on propounder of will throughout the contest; but, when he has shown due execution of will in compliance with statute, the legal presumption of sanity comes to his relief, and dispenses with his proving testator sane.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 680; 13 Va.-W. Va. Enc. Dig. 713.]

16. Trial (§ 59 (2)*)—Order of Introducing Evidence—Court's Discretion.—The order of introduction of evidence lies largely in the discretion of the trial court, and its rulings will not be reversed, where the objecting party shows no prejudice or injury.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 597.]

17. Appeal and Error (§ 730 (1)*)—Assignment of Error—Sufficiency—Instructions.—Assignments of error relating to instructions given, but failing to point out the error complained of, will not be considered.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 581.]

18. Wills (§ 330 (1)*)—Probate—Testamentary Capacity—Presumption of Sanity—Instructions.—An instruction on the burden of proving testamentary capacity upon offering a will for probate, and upon the presumption of testator's sanity, held not misleading.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 681, 737.]

19. Trial (§ 194 (9)*)—Testamentary Capacity—Instructions—Commenting on Weight of Evidence.—An instruction as to the peculiar weight of testimony of witnesses to a will as to testator's testamentary capacity held not objectionable, as commenting on weight of evidence.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 681, 734.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

20. Appeal and Error (§ 843 (3)*)—Unnecessary Questions or Questions Not Proper to Decide.—Where a cause must be remanded for a new trial for other reasons, it is improper to consider the trial court's denial of motion to set aside verdict as contrary to evidence, since evidence may be different upon new trial.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 586.]

Error to Corporation Court of Staunton.

Bill of complaint by Armistead Rust and others against Herbert Taylor, in his own right and as executor of the estate of Frederick G. Rust, deceased, and Virgil Reid, praying an issue devisavit vel non to determine the validity of an alleged will. Verdict of jury, and decree based thereon for defendants and in favor of the will, and complainants bring error. Verdict set aside, decree reversed, and cause remanded.

E. E. Garrett, of Leesburg, *Fitzhugh Elder*, of Staunton, and *M. J. Fulton*, of Richmond, for plaintiffs in error.

Timberlake & Nelson, *Chas. Curry*, and *Jos. A. Glasgow*, all of Staunton, for defendants in error.

HILLIARD *v.* UNION TRUST CO. OF NEW JERSEY et al.

Nov. 14, 1918.

[97 S. E. 335.]

1. Appeal and Error (§§ 181, 499 (1)*)—Reservation of Grounds of Review—Objection Not Raised Below.—Objections not raised in the lower court, or, if made in fact, not properly presented in the record, will not be considered in the appellate court; a rule not obtaining where the questions are jurisdictional.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 547, 548.]

2. Appeal and Error (§ 1008 (2)*)—Review—Judgment of Trial Court.—Where jury was waived and all questions of law and fact submitted to the court, the evidence and not the facts being certified, the rule of decision in the appellate court is to give the judgment of the trial court the same effect as the verdict of a jury.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 577, 578.]

3. Appeal and Error (§ 1011 (1)*)—Review—Finding on Conflicting Evidence.—The finding of the trial court on conflicting evidence as to a question of fact will not be disturbed on writ of error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 577, 578.]

4. Attachment (§ 200*)—Sale—Gross Inadequacy of Price—Evidence.—Testimony of a witness, at a subsequent time when conditions had changed, that he would give \$10,000 for an interest in at-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.